IN THE

Supreme Court of the United States

OCTOBER TERM, 1973.

No. .

THE WILLIAMS & WILKINS CO.,
Petitioner,

v.

THE UNITED STATES,
Respondent.

BRIEF AMICI CURIAE FOR AMERICAN SOCIETY FOR TESTING AND MATERIALS AND NATIONAL COUNCIL OF TEACHERS OF MATHEMATICS.

With the consent of both parties, the AMERICAN SOCIETY FOR TESTING AND MATERIALS and NATIONAL COUNCIL OF TEACHERS OF MATHEMATICS respectfully submit this Brief in support of the grant of the Petition for Certiorari.

The letters of consent have been filed with the Clerk of this Court.

With the advent of automatic copying machines such as of the electrostatic type (Xerox), NIH in 1970 made 86,000 Xerox copies constituting 930,000 pages. In 1968, NLM distributed 120,000 copies of journal articles totaling about 1.2 million pages (Dissenting Opinion) page 31. To

merely state the number of Xerox copies made without any payment to the proprietor or owner of the copyright is to dramatize the importance of the question it is believed should be decided by this Court. The question really resides into whether or not the advent of automatic copying machines has repealed the direct language and intent of the Copyright Act.

That such question transcends the interests of the litigants is demonstrated by the activities of organizations such as ASTM and NCTM.

American Society for Testing and Materials.

AMERICAN SOCIETY FOR TESTING AND MATERIALS is a scientific organization formed in 1898 for the purpose of promoting knowledge of the materials of engineering and standardizing specifications and methods of use. It is a nonprofit corporation having tax-exempt status as a charitable organization. At the present time the Society has more than 20,000 members. These include individuals, corporations, associations, governmental departments, universities and other bodies, technically qualified to carry on the work of the Society. At the present time ASTM has on hand and for sale standardizing specifications for materials and methods of testing such materials in excess of 4,700 leaflets. Nearly 75% of its income is derived from the sale of its publications notwithstanding the Society freely grants to scholars, engineers and scientists the right to reference, to extract, or to use selected portions of its publications without charge. However, since the early 1920's a reasonable charge is made for copies of entire documents for reprints, whether they be single or multiple copies. Accordingly, if each of its approximately 50,000 customers were to each make one copy of an ASTM document, and without payment for the privilege, the loss to the Society would be severe.

AMERICAN SOCIETY FOR TESTING AND MATERIALS submits that the public interest will be best served by grant of the Petition for Certiorari.

National Council of Teachers of Mathematics.

NATIONAL COUNCIL OF TEACHERS OF MATHEMATICS (NCTM) was organized in 1920. Its purpose is to assist in promoting the interests of mathematics in America and to vitalize and coordinate the work of local organizations of teachers of mathematics. NCTM, the only organization of its type, has had a major influence on the teaching of mathematics. Outstanding persons in mathematics education have been leaders and participants in its program. It has served as an agency for both the coordination and stimulation of major efforts to improve the teaching of mathematics.

NCTM publishes four journals: *The Mathematics Teacher; The Arithmetic Teacher; The Mathematics Student Journal;* and *The Journal for Research in Mathematics Education.* NCTM also publishes yearbooks on particular problems and numerous books and pamphlets on a wide range of topics. It has 47,000 individual members with 30,000 institutional subscriptions to *The Mathematics Teacher* and *The Arithmetic Teacher.*

NCTM is interested in this suit because of its belief that reasonable compensation from photocopy users is vital to the long-range economic health of specialized scholarly journals such as the ones published by NCTM. Continued publication of these journals provides to teachers and their students the most significant type of access to scholarly papers in their respective fields.

NCTM accordingly joins in this brief in support of the grant of the Petition for Certiorari.

CONCLUSION.

It is believed that sufficient reasons have been presented in petitioner's Petition for Writ of Certiorari together with those here presented to justify grant of the Petition.

Respectfully submitted,

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